IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B RADHAKRISHNAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 28824 of 2007(F)

OA.8/2001 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

VALLIYAMMA,D/O. CHAMUNNI,NADUKKALAM,
NATTUKAL, KOZHINJAMPARA, PALAKKAD.

BY ADV. SRI.R.SURAJ KUMAR
SMT.GEETHA P.MENON

RESPONDENTS:
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1. THE RECOVERY OFFICER, DEBT RECOVERY TRIBUNAL(KERALA AND LAKSHADWEEP), ERNAKULAM.

2. THE SOUTH INDIAN BANK,CALICUT BRANCH CALICUT.

3. M/S. RISHI AGENCIES,COURT ROAD , CALICUT,REPRESENTED BY ITS PROPRIETOR, K.H. SHOUKATHALI.

4. ANNAPURNA, W/O.CHOKKALINGAM, 15TH CROSS ROAD,ERNAKULAM.

R2 BY SC SRI. K. PRABHAKARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

W.P.C. NO. 28824 OF 2007

Dated this the 28th day of September, 2007

JUDGMENT

Petitioner, though she pleads that she is pretty old and infirm, does not dispute the fact that she had provided her lands as collateral security for the loan availed by the third respondent from the second respondent-Bank. Recovery certificate was issued by the Debts Recovery Tribunal. Recovery Officer brought the property to sale and sold it in auction for Rs. 7.50 lakhs which is Rs. 20,000/- in excess of the upset price fixed. After the auction sale, petitioner invoked Rule 60 in Schedule II of the Income Tax Act, 1961 which provides for setting aside a sale of immovable property on deposit. Ext.P3 order has been issued by the Recovery Officer on the ground that the said application was not accompanied by requisite deposit of amount due as per recovery certificate.

2. According to the petitioner, she filed Ext.P4 appeal against that order before the Debts Recovery Tribunal as an indigent person and the Tribunal has placed that appeal for report from the appropriate

authority regarding her alleged indigency to consider the question whether that appeal should be entertained, as one filed by the petitioner as an indigent. This Writ Petition is filed seeking a direction to the Recovery Officer to keep further proceedings, on the basis of sale, in abeyance till the report on the question of indigency of the petitioner is decided by the Tribunal.

3. I have heard the learned counsel for the petitioner and the learned standing counsel for the Bank.

4. The application that the petitioner filed before the Recovery Officer is one invoking Rule 60 in Schedule II of the I.T. Act and not under Rule 61. Therefore the sustainability of Ext.P3 order, which the petitioner impugned in Ext.P4 appeal before the Debts Recovery Tribunal, would depend upon the question whether the conditions stipulated in Rule 60 were complied with by the petitioner while invoking that provision to set aside the sale. It is the requirement of Rule 60 that an application to set aside a sale under that provision has to be made on depositing the amount specified in the proclamation of sale **as that for the recovery of which the sale was ordered,** with

interest, etc. as stated in clause 1(a) of that Rule and also other payments which are envisaged under clause 1(b). It is the admitted situation that the petitioner has not deposited such amounts. Therefore her application has been rightly rejected by the Recovery Officer as per Ext.P3. Therefore I do not find any ground to extend the visitorial jurisdiction of this Court to maintain the situation of status quo till disposal of Ext.P4 appeal.

5. Learned counsel for the petitioner also pointed out that the address of the fourth respondent, the vendee under the auction sale, appears to be a fictitious one and that all is not well with the proceedings. He also stated that there are some disputes regarding the manner in which proclamation has been made. The said two are not grounds relatable to Rule 60, though it may, in some cases, fall within the pale of Rule 61 which provides for setting aside the sale on grounds of irregularity and other attendant situations. It is not as if I have not noticed the manner in which fourth respondent is described, but that by itself is totally irrelevant to decide an application under Rule 60 of Schedule II of the I.T. Act. I may also notice in this context that by

Rule 60(2), if one were to make an application invoking the grounds available under Rule 61, i.e., on the grounds of irregularity, etc., an application under Rule 60 cannot be prosecuted without withdrawing the application under Rule 61. This dichotomy of proceedings is legislatively contemplated to compel the defaulter to elect his course, be under Rule 60 or Rule 61, and thereby exclude any unnecessary mixing up of contentions.

For the aforesaid reasons, I find no ground to interfere with Ext.P3 order. Writ Petition fails and is dismissed.

(THOTTATHIL B. RADHAKRISHNAN)
Judge

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